

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

VISTO CORPORATION,
Plaintiff,

v.

SEVEN NETWORKS, INC.,
Defendant.

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CIVIL ACTION NO. 2:03-CV-333 (TJW)

ORDER

Before the Court are various motions that the parties have identified as pending in their Joint Pre-Trial submission. The Court has carefully considered the parties' written submissions and orders as follows:

Seven's Motion for Finding of Contempt, Application for Show Cause and Request for Other Relief for Violation of Protective Order (#206) is carried with the case. Seven's Motion to Strike the Expert Report of Dr. Head Concerning Infringement for Destruction of Evidence (#187) is denied.

Seven's Motion to Strike the Expert Testimony of Dr. Head Concerning Credibility and as Untimely (#197) is Granted in part and Denied in part. As to the untimeliness issue, the Court denies the motion. As to the issues regarding Dr. Head testifying regarding recall, memory, etc., the Court grants the motion. The jury will decide the credibility of the witnesses and whether the respective witnesses' memories are accurate.

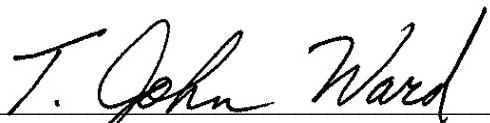
Seven's Motion to Strike Visto's June 4, 2005 Supplemental Responses to Interrogatories (#186) was denied on July 6, 2005. The Court's prior order is incorporated by reference and Seven's Motion to Strike is denied again.

Seven's Motion for Summary Judgment of Non-Infringement of Claims 1, 11, and 22 of U.S. Patent No. 6,085,192 (#293) is denied. Seven's Motion for Leave to Amend (#294) is granted.

Visto's Motion to Strike Seven's Supplemental Disclosure of New Fact Witnesses (#290) is granted. Visto's Motion to Strike Portions of Seven's Supplemental Experts Reports Regarding Invalidity of U.S. Patent No. 6,085,192 (#291) is denied in that Seven is permitted to use prior art not previously relied upon by one of its experts, as long as such prior art was previously identified in Seven's Invalidity Contentions. To the extent that Seven's new expert reports rely on prior art that was not previously in an expert report nor part of Seven's invalidity Contentions, the Court grants Visto's Motion to Strike.

Seven's Motion to Strike Portions of the Expert Report of Quentin Mimms (#189) is denied as to the substantive issues. The Court will entertain oral arguments at the Pre-Trial Conference regarding the procedural issues related to the report (which the Court notes is the subject of Seven's motion in limine no. 5).

SIGNED this 27th day of March, 2006.



T. JOHN WARD
UNITED STATES DISTRICT JUDGE